

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

DANIEL KLEEGERG, LISA STEIN,
and AUDREY HAYS,

Plaintiffs,

v.

LESTER EBER; ALEXBAY, LLC f/k/a
LESTER EBER, LLC; ESTATE OF ELLIOTT W.
GUMAER, JR.; and WENDY EBER

Defendants,

and

EBER BROS. & CO., INC.;
EBER BROS. WINE AND LIQUOR
CORPORATION; EBER BROS. WINE
& LIQUOR METRO, INC.; EBER-
CONNECTICUT, LLC; EBER-RHODE
ISLAND, LLC; EBER BROS.
ACQUISITION CORP.; EBER-METRO,
LLC; SLOCUM & SONS OF MAINE, INC.,

Defendants.

NOTICE OF MOTION

Civil Action No. 1:16-cv-09517

PLEASE TAKE NOTICE THAT, the Estate of Elliot W. Gumaer, Jr. (“Estate”), by counsel and pursuant to Fed. R. Civ. P. 56, hereby move this Honorable Court, in the Courthouse located at the Daniel Patrick Moynihan U.S. Courthouse, 500 Pearl Street, New York, New York 1000, before the Honorable Katharine H. Parker, on January 8, 2020 at 2:00 p.m., or as soon thereafter as counsel may be heard, for an Order granting partial summary judgment with respect to the Third Amended Complaint as follows:

Partial dismissal of “Count I Breach of Fiduciary Duty – Improper Transactions”

Dismissal of “Count II Breach of Fiduciary Duty – Acting as Faithless Servants.”

Partial dismissal of “Count VII Fraudulent Concealment” (other than the prong of the Count that alleges concealment of the 2012 Foreclosure Action).

Dismissal of “Count IX Accounting.”

Dismissal of the following components of the Third Amended Complaint’s Request for Relief:

- v. Disgorgement of all amounts paid to Gumaer by the Trust or any of its controlled entities since the beginning of his disloyalty, which is alleged to have begun in January 2001;
- t. Imposition of punitive damages a surcharge for the benefit of EBWLC and EB&C against Lester, Wendy, and Gumaer’s Estate, for their breaches of duties as corporate officers and directors and fraudulent concealment;
- u. Imposition of punitive damages or a surcharge for the benefit of Daniel Kleeberg, Lisa Stein, and Audrey Hays against Lester and Gumaer’s Estate, for their breaches of duties as trustees and fraudulent concealment;
- z. An accounting from Gumaer’s Estate for all transactions with and moneys paid by Lester, Wendy, the Trust, any Eber Entity, Slocum of Maine, or any other wine-and-liquor-related entities owned or controlled by Lester and/or Wendy.

Together with such other relief as the Court deems just and proper.

The Estate is supporting its motion with the following:

Affirmation of Robert B. Calihan, dated November 8, 2019.

The Estate of Elliot W. Gumaer, Jr.’s Memorandum of Law.

The Estate of Elliot W. Gumaer, Jr.’s Statement of Undisputed Materials Facts.

Affidavit of Lester Eber, dated November 8, 2019, incorporated by reference.

Affidavit of Wendy Eber, dated November 8, 2019, incorporated by reference.

Eber Defendants’ Memorandum of Law, incorporated by reference.

Eber Defendants' and Eber Nominal Defendants' Statement of Undisputed Material Facts, incorporated by reference.

WHEREFORE, there exists no material facts in genuine dispute with respect to the Estate's requested partial summary judgment, the Estate is entitled to partial summary judgment as a matter of law and, accordingly, the Estate respectfully requests that the Court grant this Motion in its entirety.

Dated: November 8, 2019
Rochester, New York

CALIHAN LAW PLLC

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